IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.A.ABDUL GAFOOR
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

THURSDAY, THE 22ND FEBRUARY 2007 / 3RD PHALGUNA 1928

RCRev..No. 207 of 2006()

{R.C.A.NO.17/2005 OF THE ADDL.RENT CONTROL
APPELLATE AUTHORITY, MAVELIKKARA
IN R.C.P.NO.1/2001 OF THE RENT CONTROL COURT,KAYAMKULAM}

.....

PETITIONER/APPELLANT/COUNTER PETITIONER:

THOMAS JACOB, AGED 50 YEARS,
AMPIKULANGARA VEEDU,
PERUNGALA MURI,
KAYAMKULAM VILLAGE, ALAPPUZHA.

BY ADV. SRI.R.GOPAN

RESPONDENTS/PETITIONERS:
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1. VIJAYALEKSHMI AMMA,
AGED 50 YEARS, W/O.N.MOHANAKUMAR,
ELLIKKULATHU VEEDU, CHIRAKKADAVOM MURI,
KAYAMKULAM VILLAGE, ALAPPUZHA.

2. VIJAYA MOHANAN,
AGED 28 YEARS, S/O.MOHANKUMAR,
OF DO. DO. DO.

BY ADV. SRI.M.M.ABDUL AZIZ (SR.)
SRI.M.A.ABDUL HAKHIM
SRI.JYOTHISH.J.KALLINGAL

THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON 22/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON I.A.NOS.1396/06, 3293/06
& 475 OF 2007 IN R.C.R.NO.207/06

DISMISSED.

Sd/-
(K.A.ABDUL GAFOOR)
JUDGE

Sd/-
(ANTONY DOMINIC)
22.02.2007. JUDGE

sk/-

//true copy//

P.S. To Judge.

K.A.ABDUL GAFOOR &
ANTONY DOMINIC , JJ.

R.C.R.NO.207 OF 2006 F

Dated this the 22th day of February, 2007.

O R D E R

Abdul Gafoor, J.

This is a revision by the tenant. The landlords sought eviction of the tenant urging grounds available under Sections 11(2)(b), 11(3) and 11(8) of the Kerala Buildings (Lease and Rent Control) Act [Act 2 of 1965] {hereinafter referred to as 'the Act'}.

2. The landlords were conducting an educational institution. They wanted the space occupied by the tenant, A and B scheduled rooms for the purpose of expansion of the institution. Therefore, the Rent Controller, allowing the petition on the said counts, ordered eviction under Section 11(7) as well. The tenant surrendered one among the shop rooms viz., building scheduled as 'A' and carried the matter in appeal, concerning the building scheduled as 'B'. The

order of eviction on the grounds under Sections 11 (2)(b), 11(3) and 11(8) of the Act was confirmed. In the above circumstances, the tenant has approached this court with this revision.

3. The contention of the tenant that, as the landlords have been conducting an educational institution in the very same structure, they cannot urge both the grounds under Sections 11(3) and 11 (8) to evict the tenant for the purpose of expansion of the institution, is well justified in the light of the decision of this court reported in **Indian Saree House v. Radhalakshmy {2006(3) K.L.T. 129}**. So the order of eviction under Section 11(3) of the Act has to be set aside and we do so.

4. Admittedly, the landlords are conducting an educational institution in the structure, where 'B' scheduled room is occupied by the revision petitioner/tenant. Admittedly, the tenant himself has

given vacant possession of 'A' scheduled building for the same purpose. Merely because the landlords are having other buildings in a different structure and that building is sufficient for conducting classes, the tenant cannot resist the eviction sought for under Section 11(8) in the present structure. There is no provision like the second proviso to Section 11(3) of the Act in Section 11(8). Moreover, being an educational institution, that has to be run in the same structure. Therefore, the contention of the revision petitioner, that the authorities below had erred in finding the ground available under Section 11(8) in favour of the landlords, is not justified. When the tenant himself admits that the landlords are conducting an educational institution in the other rooms in the same structure and when the landlords have deposed that they have to expand the institution, necessarily, they are entitled to get an

order of eviction under Section 11(8) of the Act. It also, therefore, cannot be said to be not bona fide. Therefore, the finding under Section 11(8) has to be upheld.

5. At the same time, merely by reason of showing the ground under Section 11(8), the landlords are not entitled to get an order of eviction of the tenant. The Rent Controller has, at the same time, to examine the comparative hardship in terms of the first proviso to Section 11(10) of the Act. A reading of the orders of the authorities below reveal that this comparative hardship had never been enquired into by them. The contention of the landlords is that the finding of the Rent Controller that the revision petitioner/tenant was not depending upon the income derived from the business conducted by him in the plaint scheduled 'B' building for the purpose of his livelihood reveals that he does

not have any hardship. Such a finding is not sufficient for the purpose of the first proviso to Section 11(10) of the Act. In a similar matter arising in ***S.R.Babu v. T.K.Vasudevan {[2001] 8 S.C.C. 110},*** the Supreme Court has held as follows:

> ***Inasmuch as the authorities below, having proceeded on the footing that sub-section (30 of Section 11 of the Act is attracted, have not recorded a finding under the first proviso to sub-section (10) of Section 11 of the Act, it is necessary that the case should be sent back to the Rent Controller to consider whether requirement of the said proviso is satisfied and if so, to record a finding thereunder, after hearing the parties."***

6. Following this, necessarily, in the absence of a finding of the comparative hardship in terms of the first proviso to Section 11(10), the matter has to be remitted back to the Rent Controller to examine the comparative hardship alone, confirming the finding on the ground under Section 11(8) of the Act.

7. Next, we will consider the eviction ordered under Section 11(7) of the Act. Section 11 (7) reads as follows:

> ***"Where the landlord of a building is a religious, charitable, educational or other public institution, it may, if the building is needed for the purposes of the institution, apply to the Rent Control Court for an order directing the tenant to put the institution in possession of the building."***

8. A reading of this Section itself will reveal that this ground is available to an educational institution or a charitable institution. The contention of the landlord is that it is an educational institution. But the landlord is not an educational institution, but only individuals, who are conducting an educational institution and the building is not owned by the educational institution, but by the individuals, who are conducting the educational institution. Consequently, the protection of Section 11(7) of the Act will not be available to individuals, who are

simultaneously conducting educational institution and having buildings let out to tenants. Necessarily, the order of eviction passed under Section 11(7) of the Act shall have to be reversed.

Thus, allowing the revision petition as above, the matter is remitted back to the Rent Controller for the purpose of finding out the comparative hardship of the parties in terms of the first proviso to Section 11(10) of the Act alone. The parties shall appear before the Rent Controller, Kayamkulam on **12.3.2007** and the Rent Controller shall dispose of the matter before **30.6.2007.**

Sd/-
(K.A.ABDUL GAFOOR)
JUDGE

Sd/-
(ANTONY DOMINIC)
JUDGE

sk/

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K.A.ABDUL GAFOOR &
ANTONY DOMINIC, JJ.

R.C.R.NO.207 OF 2006 F

O R D E R

22nd February, 2007.